



Amendment No. 1  
to  
Contract No. MA 5600 NS19000018  
for  
ADVA Resident Engineer  
between  
ADVA Optical Networking North America, Inc.  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be effective March 8, 2020 to March 7, 2021. One option will remain.
- 2.0 The total contract amount is increased by \$285,104 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 03/08/2019 – 03/07/2020	\$276,800.00	\$276,800.00
Amendment No. 1: Option 1 – Extension 03/08/2020 – 03/07/2021	\$285,104.00	\$561,904.00

- 3.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 4.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: \_\_\_\_\_

Printed Name: Jim Howard

Procurement Manager  
City of Austin Purchasing  
124 West 8<sup>th</sup> Street  
Austin, Texas 78701

**CONTRACT BETWEEN THE CITY OF AUSTIN  
AND  
ADVA OPTICAL NETWORKING NORTH AMERICA, INC  
For  
ADVA RESIDENT ENGINEER**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and ADVA OPTICAL NETWORKING NORTH AMERICA, INC. ("Contractor"), having offices at 5755 Peachtree Industrial Blvd, Norcross, GA 30092.

**SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES**

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of this Contract, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Patricia Downey, Phone: +1 678 728-8885, Email Address: pdowney@advaoptical.com. The City's Contract Manager for the engagement shall be Leslye Conoley, Phone: (512) 974-7826, Email Address: Leslye.Conoley@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

**SECTION 2. SCOPE OF WORK**

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein at Exhibit A and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

**SECTION 3. COMPENSATION**

3.1 **Contract Amount.** The Contractor will be paid quarterly in advance. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount estimated not-to-exceed \$276,800 for all fees and expenses for the base term of 12 months, and 2 renewal options of an estimated amount of \$285,104 for two 12 months and the second renewal option with an estimated amount of \$293,657 for a total not to exceed amount of \$855,561.

3.2 **Invoices.**

3.2.1 **Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin
Department	CTM
Attn:	CTMAPInvoices@austintexas.gov
Address	1124 S. IH 35, Suite 300
City, State, Zip Code	Austin, TX 78704

3.2.1 Contractor assigned to work at the City will provide the city's designated supervisor(s) with a time sheet and activity report at the end of each week.

3.2.2 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

3.2.3 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

### 3.3 **Payment.**

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the invoice

**3.3.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

3.3.3 The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

3.3.3.1 delivery of defective or non-conforming deliverables by the Contractor;

3.3.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

3.3.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;

3.3.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.3.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

3.3.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.3.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.3.5 Payment will be made by check unless the parties mutually agree to payment by electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by electronic transfer of funds.

3.4 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate

Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract.

### 3.5 **Final Payment and Close-Out.**

3.5.1 The making and acceptance of final payment will constitute:

3.5.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.5.1.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

## **SECTION 4. TERM AND TERMINATION**

4.1 **Term of Contract.** The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of 12 months.

The Contract may be extended automatically beyond the initial term for up to 2 additional 12 month periods at the City's sole option unless the Contractor is notified in writing no less than 90 days prior to the contract's expiration.

4.1.1 If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract and Contractor 's right to provide another equally qualified person to perform the tasks required under the this Agreement subject to the City's approval.

4.1.2 Upon expiration of the initial term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under this Contract (not exceed 120 calendar days unless mutually agreed on in writing) at the then in effect monthly rate as prorated.

4.1.3 This is a 12 month Contract. Prices are firm for the first twelve (12) months.

4.2 **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective thirty (30) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such thirty (30) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. Subject to the limitation of liability as set forth in Section 7.3, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without

limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate.

4.5 **Termination Without Cause.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon ninety (90) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 **Fraud.** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

## SECTION 5. OTHER DELIVERABLES

5.1 **Insurance:** The following insurance requirements apply.

### 5.1.1 **General Requirements.**

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Contract execution and within fourteen (14) calendar days after written request from the City.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies authorized to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

5.1.1.7 All endorsements naming the City as additional insured, waivers, as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin Purchasing Office  
P. O. Box 1088  
Austin, Texas 78767

OR

[PURInsuranceCompliance@austintexas.gov](mailto:PURInsuranceCompliance@austintexas.gov)

5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any

differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of endorsements and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions if terms, conditions, limitations or exclusions are not in line with section 5.1 except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions to be mutually agreed between the City and Contractor.

5.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract. The Contractor has the right to transfer coverages between insurance companies as they deem necessary at any time.

5.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.14 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

5.1.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.3 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

5.1.2.1.4 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.1.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

5.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

5.1.2.3.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC420601, or equivalent coverage.

5.1.2.4 **Errors and Omission Insurance.** The Contractor shall provide coverage, at a minimum limit of \$ 1 million per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of services under this Agreement.

If coverage is written on a claims-made basis, the retroactive data shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the contract.

5.1.2.5 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

## 5.2 **Equal Opportunity.**

5.2.1 **Equal Employment Opportunity.** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.2.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

5.3 **Interested Parties Disclosure.** As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

## 5.4 **Delays.**

5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.4.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.5 **Rights to Proposal and Contractual Material.** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.6 **Publications.** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

## **SECTION 6. WARRANTIES**

### **6.1 Warranty – Price.**

6.1.1 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6.2 **Warranty – Services.** The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable mandatory Federal, State and local laws, rules or regulations.

## **SECTION 7. MISCELLANEOUS**

### **7.1 Audits and Records.**

7.1.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

#### **7.1.2 Records Retention:**

7.1.2.1 Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.

7.1.2.2 All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City.

7.1.3 The Contractor shall include sections 7.5.1 and 7.5.2 above in all subcontractor agreements entered into in connection with this Contract.

7.2 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected.

7.3 **Limitation of Liability.**

NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONTRACT THE FOLLOWING PROVISIONS SHALL EXCLUSIVELY GOVERN THE LIABILITY OF THE PARTIES, REGARDLESS OF THE LEGAL THEORY UPON WHICH IT IS BASED, INCLUDING BUT NOT LIMITED TO LIABILITY IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY), MISREPRESENTATION, UNDER WARRANTY, INDEMNITY OR GUARANTEE.

THE AGGREGATE LIABILITY OF CONTRACTOR ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT SHALL BE LIMITED TO A TOTAL OF TWO HUNDRED AND FIFTY THOUSAND US-DOLLARS (\$250,000).

NEITHER PARTY IS LIABLE FOR LOSS OF USE, PROFIT, SAVINGS, GOODWILL, BUSINESS, OR CUSTOMERS, LOSS OR DAMAGE TO DATA OR SOFTWARE, AND CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES OR FOR ANY OTHER LOSS OR DAMAGE OF A SIMILAR NATURE.

THE LIMITATIONS SET FORTH IN THIS ARTICLE SHALL NOT APPLY FOR DAMAGE CAUSED BY INTENTIONAL ACTS, LIABILITY AND INDEMNITY FOR BODILY INJURY (INCLUDING DEATH) AND, IF APPLICABLE, CLAIMS UNDER MANDATORY PRODUCT LIABILITY LAWS.

7.3.1 Definitions:

7.3.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.3.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.3.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

7.3.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.3.2 **SUBJECT TO THE LIMITATION OF LIABILITY AS SET FORTH IN SECTION 7.3, THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

7.4 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2<sup>nd</sup> Street, 4<sup>th</sup> Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.5 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:  
City of Austin, Purchasing Office  
ATTN: Mary Lou McCarver  
P O Box 1088  
Austin, TX 78767

To the Contractor:  
Contractor's Name  
ATTN: John Reynolds, Contract Manager  
jreynolds@advaoptical.com

And

ADVA Optical Networking SE  
Att.: General Counsel  
Fraunhoferstrasse 9a  
82152 Martinsried  
Germany  
Tel.: +49 89 890 665 931  
Fax: +49 89 890 665 22 931  
email: legal@advaoptical.com

7.6 **Confidentiality.** In order to provide the deliverables to the City, the parties may require access to certain ' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information) (collectively, "Confidential Information"). The parties acknowledge and agrees that the Confidential Information is the valuable property and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the disclosing party. The parties (including employees, subcontractors, agents, or representatives) agrees that they will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the disclosing party or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the receiving party promptly notifies the disclosing party before disclosing such information so as to permit the disclosing party reasonable time to seek an appropriate protective order. The parties agree to use protective measures no less stringent than the party uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.7 **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.8 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to

deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.9 **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.10 **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.11 **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.12 **Assignment-Delegation.** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

7.13 **Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.14 **Modifications.** The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.15 **Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.16 **Dispute Resolution.**

7.16.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.16.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

#### **7.17 Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.**

7.17.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

7.17.2 The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

7.17.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

#### **7.18 .**

7.18.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

7.18.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

7.18.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.18.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.18.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.18.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

7.18.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.18.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.18.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

#### 7.19 **Living Wages.**

7.19.1 The minimum wage required for any Prime Contractor employee and all tiers of subcontractors directly assigned to this City Contract is \$14.00 per hour, unless Published Wage Rates are included in the solicitation. In addition, the City may stipulate higher wage rates in certain Contracts in order to assure quality and continuity of service.

7.19.2 The City requires Contractors to provide a signed certification within five (5) calendar days of Contract execution certifying that all employees of the Prime Contractor and all tiers of subcontractors directly assigned to this Contract will be paid a minimum living wage equal to or greater than \$14.00 per hour (see Section 0815. The certification shall include a list of all Prime Contractor and all tiers of subcontractor employees directly assigned to providing services under the Contract including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Contract.

7.19.3 The Contractor shall maintain throughout the term of the Contract basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA).

7.19.4 The Contractor shall provide to the Department's Contract Manager with the first invoice, individual Employee Certifications for all Prime Contractor and subcontractor employees directly assigned to the Contract. The City reserves the right to request individual Employee Certifications at any time during the Contract term. Employee Certifications shall be signed by each Prime Contractor and subcontractor employee directly assigned to the Contract. The Employee Certification form is available on-line at:

[https://assets.austintexas.gov/purchase/living\\_wages\\_employee\\_certification.pdf](https://assets.austintexas.gov/purchase/living_wages_employee_certification.pdf)

7.23.5 Contractor shall submit Prime Contractor employee certifications annually on the anniversary date of Contract award with the respective invoice to verify that employees are paid the Living Wage throughout the term of the Contract. The Employee Certification Forms shall be submitted for Prime Contractor and subcontractor employees directly assigned and added to the Contract and/or to report employee changes as they occur.

7.23.6 The City's Contract Manager will periodically review the employee data submitted by the Contractor to verify compliance with this Living Wage provision. The City retains the right to review employee records identified above in paragraph 7.23.3 above to verify compliance with this provision.

7.20 **Jurisdiction And Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis

County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.21 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.22 **Holidays.** The following holidays are observed under this contract :

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Good Friday	Friday before Easter Sunday.
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

7.23 **Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

7.24 **Non-Suspension or Debarment Certification.** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

**Incorporation of Documents.** Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, in Exhibit G - Standard Purchase Definitions.

7.25 **Order of Precedence.** The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.

7.25.1 any exceptions to the Offer accepted in writing by the City;

7.25.2 the Supplemental Purchase Terms and Conditions;

7.25.3 the Standard Purchase Terms and Conditions;

7.25.4 the Offer and exhibits; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

ADVA OPTICAL NETWORKING NORTH  
AMERICA, INC

CITY OF AUSTIN

By: John Scherzinger  
Signature

By: Gil Gilkha  
Signature

Name: John Scherzinger  
Printed Name

Name: Gil Gilkha

Title: SVP Sales NA

Title: Contract Management Specialist IV

Date: MARCH 6, 2019

Date: 3/7/19

By: Kenneth A. Pratt II  
Signature

Name: Kenneth A. Pratt II  
Printed Name

Title: Director Commercial Management Americas

Date: MARCH 6, 2019

## List of Exhibits

Exhibit A	Scope of Work
Exhibit B	Resident Engineer Requirements
Exhibit C	ADVA Optical Networking Response
Exhibit D	Non Discrimination Certification, Section 0800
Exhibit E	Living Wages Contractor Certification, Section 0815
Exhibit F	Living Wages Employee Certification, Section 0820

**EXHIBIT A**  
**Scope of Work**

## SCOPE OF WORK FOR LUCASZ WOLCZYNSKI

**1.0 SCOPE OF WORK FOR LUKASZ WOLCZYNSKI**

---

**1.1 Purpose of Certificate of Exemption, Non-Competitive Bid**

The City of Austin (COA) is requesting a bid for the ADVA Optical Supporting Resident Engineer, **Lukasz Wolczynski**. The continued placement of **Mr. Wolczynski** is due to a current successful, full-time placement of **Mr. Wolczynski** beginning in early 2018 and ending December 31, 2018 in the Network Infrastructure Operations (NIO) Division of the Communication & Technology Management (CTM) Department.

Network Infrastructure Operations (NIO) Division of Communication and Technology Management Department is seeking a one (1) year contract totaling three (3) year contract TERM.

**1.2 City of Austin Business Goals**

The goal of the City of Austin are a bespoke contract with ADVA Optical Networking to support the recently implemented, critical Enterprise ADVA Network OSI Layer 1.

Business goals are:

1. The ability to have an ADVA Optical Support Resident Engineer on-site, full-time in Austin, Texas.
2. The ability to timely (in the future) bring the City's Enterprise Network system on-line with the ADVA NOC with the support of an ADVA Engineering Profession knowledgeable in the City's current design, products, telecommunication rooms/data centers and topology.
3. The ability to have a specialized on-site ADVA Optical Point of Contact for Centralized Technical Assistance Center (CTAC) cases, when matters arise.
4. The ability to have the City's ADVA Network Management System (NMS) monitored by an experienced ADVA Optical Support Engineer.
5. To ensure the Enterprise operational business needs of the City's Network Infrastructure Operations Division are met with the "best practices" an ADVA Optical technology resource can provide at a reasonable cost.
6. To maintain the completed City of Austin's Dense Wavelength Division Multiplexing/Coarse Division Multiplexing (DWDM/CWDM) technology consistent with current newly implemented system in 2018.
7. To maintain an enterprise network backbone capable of scaling to meet the needs of the City of Austin over the next five (5) years.
8. To update (DWDM/CWDM) transport monitoring tools, notifying network administrators for timely notification of an outage or serious fault.

## SCOPE OF WORK FOR LUCASZ WOLCZYNSKI

- a. To obtain a means to employ the best technical ADVA employee resource to support in-house NIO ADVA Optical Operations.

### 1.3 ADVA Optical

During the life of the contract ADVA Optical shall:

- Provide a detailed list of the necessary ADVA CBI resources with expertise, complete with current personnel job descriptions, which shall be required for the City to maintain the system once implemented.
- Provide the requested ADVA Resident Support Engineer's updated resume indicating experience with the City, CTM Network Infrastructure Operations, the City's ADVA Optical Enterprise Network and requirements implemented.
- See attachment Exhibit "A" Requirements for **Lukasz Wolczynski**.

**NOTE:** The ADVA Vendor's staff shall not have the authority to escort any other Vendor, including their own ADVA staff to the field.

SCOPE OF WORK FOR LUCASZ WOLCZYNSKI

**2.0 BID EVALUATION**

**2.1 Evaluation Criteria:**

Criteria	Description	% of Total
Designation and submission of the <b>Lukasz Wolczynski</b> , as ADVA Optical Resident Support Engineer: <ul style="list-style-type: none"> <li>• ADVA Optical Experience</li> <li>• Experience with ADVA TAC</li> <li>• Experience with the City of Austin Facilities</li> <li>• Experience with the COATN 2.0 Upgrade Project</li> <li>• Knowledge of Austin’s Enterprise Network Requirements</li> <li>• Experience with CTM NIO Staff</li> </ul>	Compliance with functional requirements  Compliance with technical requirements	80
Evaluated Cost	Annual cost  Annual cost maintained for the contract TERM  Payment Schedule/Milestones	20
TOTAL		100

**EXHIBIT B**  
**Resident Engineer Requirements**

<b>Certificate of Exemption, Non-Competitive Bid for ADVA Optical Supporting Resident Engineer , Lukasz Wolczynski</b>					
<b>Req. No.</b>	<b>Professional Services</b>	<b>Description of Requirements</b>	<b>COA</b>	<b>ADVA Optical</b>	<b>Mandatory / Preferred</b>
001	Lab Verification	Provide assistance in the City's lab in testing new features and/or solutions in advance of production rollout.		✓	
002	Lab Verification	Assist and mentor in the support for City-led daily operational test activities associated with the ADVA Optical Network.		✓	
003	Configuration and Service Provisioning	Provide assistance to City Network Operations in system setup, configuration, backup/restore and routine maintenance.		✓	
004	Configuration and Service Provisioning	Review and provide input to the configuration guidelines established from the Solution Design phase of the engagement.		✓	
005	Configuration and Service Provisioning	Provide assistance in the review of configuration data and support the configuration and provisioning of the solution into production.		✓	
006	Configuration and Service Provisioning	Support final validation upon successful completion of the configuration.		✓	
007	Configuration and Service Provisioning	Verify City's ADVA Optical products integrate and operate smoothly with equipment from other vendors.		✓	
008	Software releases	Assist, support, oversee and/or provide knowledge transfer on the software installation and upgrade process.		✓	
009	Software releases	Provide consultation to the City for the integration of Software release processes into existing methodology.		✓	
010	On-site network fault management	Assist and mentor NOC Operations with fault isolation, issue triage, investigation, replication and trouble resolution, in the future.		✓	
011	On-site network fault management	Provide support to City's NOC to accelerate restoration time and minimize downtime, in the event of reported issues.		✓	
012	On-site network fault management	Provide on-site trouble resolution and fault isolation support for City NOC and local field personnel, when issues are escalated.		✓	

**Certificate of Exemption, Non-Competitive Bid for ADVA Optical Supporting Resident Engineer , Lukasz Wolczynski**

Req. No.	Professional Services	Description of Requirements	COA	ADVA Optical	Mandatory / Preferred
013	Training	Provide informal ADVA on-the-job-training, hands on, over the shoulder knowledge transfer on the installation and operations.		✓	
014	Transition Plan	Assist in defining the Transition from project support to Operational self-sufficiency.		✓	
015	Transition Plan	Support Transition and Planning for the COATN 2.0 Project Upgrade for Operations in regards to the addition of new nodes/sites to the City's Enterprise ADVA Optical Enterprise Network.		✓	
016	Technical Escalation	Assist in bug tracking and reporting, review of release notes and understanding of warning's alerts and bulletins.		✓	
017	Technical Escalation	Provide the Technical Point of Contact for escalation support to the City and ADVA CTAC.		✓	
018	Technical Escalation	Perform Network Management System utilization/monitoring on the City of Austin Network Management Systems.		✓	
019	Technical Escalation	Disseminate new information into the City's NIO Division, other Departments and groups, and with City Vendors.		✓	
020	Technical Escalation	Attend technical review meetings.		✓	
021	Technical Escalation	Assist CTM NIO Division staff with tracking and managing the network equipment inventory.		✓	
022	Service Part Number	Provide ADVA Part Number: <b>70411900001</b> ADVA Description: <b>Resident Support Engineer</b>		✓	
023	ADVA Management	Confirm scope of work between ADVA and City.		✓	
024	ADVA Management	Conduct periodic quality reviews to confirm City satisfaction.		✓	
025	ADVA Management	Verify annually with City assigned ADVA Resident Support Engineer.		✓	
026	Work Schedule	Provide 40 hours weekly on-site support to daily operations, maintenance, administration, and expansion of ADVA optical system and ADVA Network Management System.		✓	

Certificate of Exemption, Non-Competitive Bid for ADVA Optical Supporting Resident Engineer , Lukasz Wolczynski					
Req. No.	Professional Services	Description of Requirements	COA	ADVA Optical	Mandatory / Preferred
027	Work Schedule	Work on the City's premises as an on-site contracted City employee full-time.		✓	
028	Work Schedule	Provide 20 hours (above a 40-hour work week) annually for overtime support outside of normal business hours.		✓	
029	Experience	Provide an updated resume for the ADVA Resident Support Engineer indicating experience with the City, CTM Network Infrastructure Operations staff, the City's ADVA Optical Enterprise Network and requirements implemented.		✓	
030	Experience	Experience with monitoring and administration of the COA ADVA Optical Enterprise Network.		✓	
031	Experience	Current active Criminal Background Investigation (CBI) and FBI Criminal Justice Information Services (CJIS) clearance(s) through Austin Police Department with fingerprints on file. <b>Note:</b> ADVA Optical Resident Support Engineering (Must be able to maintain the CBI and CJIS clearances for the contract duration.		✓	
032	Experience	Apply a full understand of "best practices" derived from the City experiences to prevent issues from arising by having a full knowledge of the NIO Division and the newly implemented COATN 2.0 Project Upgrade.		✓	
033	Administrative	Provide office space for ADVA Optical Resident Support Engineer.	✓		
034	Administrative	Provide facilities, including telephones, personal computer hookups, and access to copy machines.	✓		
035	Administrative	Provide Local Area Network/Wide Area Network access.	✓		

<b>Certificate of Exemption, Non-Competitive Bid for ADVA Optical Supporting Resident Engineer , Lukasz Wolczynski</b>					
<b>Req. No.</b>	<b>Professional Services</b>	<b>Description of Requirements</b>	<b>COA</b>	<b>ADVA Optical</b>	<b>Mandatory / Preferred</b>
036	Administrative	Provide "authorization to pay" to the City's Finance Office regarding the Vendor's deliverables as negotiated.	✓		
037	Administrative	Provide notification to Enterprise End Users of the City's Network when work is to be performed at their site/node or affecting services.	✓		
038	Administrative	Provide knowledgeable technical NIO staff members as escorts when and where required in City facilities.	✓		
039	Administrative	Provide day-to-day direction for on-site ADVA Resident Support Engineer when questions arise.	✓		
040	Administrative	Provide Administrative designated Contract Single Point of Contact while working as an ADVA Optical employee on-site.	✓		
041	Administrative	Provide the point of contact for the ADVA Resident Support Engineer during designated on-site new or upgrade projects.	✓		
042	Administrative	Provide weekly status reports to the City's Point of Contact.		✓	
043	Administrative	Provide weekly timesheet reports per calendar month to the City's Point of Contact.		✓	
044	Administrative	Provide a City hangtag to the ADVA Optical Resident Support Engineer for free parking, where applicable during a field visits and implementation.	✓		
045	Administrative	Responsible for payment during the unplanned leave or termination of ADVA Optical Resident Support Engineer position.		✓	

# INFORMATION TECHNOLOGY

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Austin, Texas 78704-2614

Certificate of Exemption, Non-Competitive Bid for ADVA Optical Supporting Resident Engineer , Lukasz Wolczynski					
Req. No.	Professional Services	Description of Requirements	COA	ADVA Optical	Mandatory / Preferred
046	Administrative	Provide lodging, travel, or per diem related to Resident Support Engineer or ADVA Optical Management Staff.		✓	
047	Administrative	Provide confidentiality to the City not revealing knowledge, data, processes under the City's protection		✓	

**EXHIBIT C**  
**ADVA Optical Networking Response**

**ADVA Optical Networking**  
**Response**  
**to**  
**City of Austin**  
**Request For Bid**  
**ADVA Optical Supporting Resident Engineer**

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## 1.0 Scope of Work for Lukasz Wolczynski

### 1.1 Purpose of *Certificate of Exemption, Non-Competitive Bid*

The City of Austin (COA) is requesting a bid for the ADVA Optical Supporting Resident Engineer, **Lukasz Wolczynski**. The continued placement of **Mr. Wolczynski** is due to a current successful, full-time placement of **Mr. Wolczynski** beginning in early 2018 and ending December 31, 2018 in the Network Infrastructure Operations (NIO) Division of the Communication & Technology Management (CTM) Department.

Network Infrastructure Operations (NIO) Division of Communication and Technology Management Department is seeking a one (1) year contract totaling three (3) year contract TERM.

ADVA Response: Read and agree.

### 1.2 City of Austin Business Goals

The goal of the City of Austin are a bespoke contract with ADVA Optical Networking to support the recently implemented, critical Enterprise ADVA Network OSI Layer 1.

Business goals are:

1. The ability to have an ADVA Optical Support Resident Engineer on-site, full-time in Austin, Texas.

ADVA Response: Read and agree.

2. The ability to timely (in the future) bring the City's Enterprise Network system on-line with the ADVA NOC with the support of an ADVA Engineering Profession knowledgeable in the City's current design, products, telecommunication rooms/data centers and topology.

ADVA Response: Read and agree.

3. The ability to have a specialized on-site ADVA Optical Point of Contact for Centralized Technical Assistance Center (CTAC) cases, when matters arise.

ADVA Response: Read and agree.

4. The ability to have the City's ADVA Network Management System (NMS) monitored by an experienced ADVA Optical Support Engineer.

ADVA Response: Read and agree.

5. To ensure the Enterprise operational business needs of the City's Network Infrastructure Operations Division are met with the "best practices" an ADVA Optical technology resource can provide at a reasonable cost.

ADVA Response: Read and agree.

6. To maintain the completed City of Austin's Dense Wavelength Division Multiplexing/Coarse Division Multiplexing (DWDM/CWDM) technology consistent with current newly implemented system in 2018.

ADVA Response: Read and agree.

7. To maintain an enterprise network backbone capable of scaling to meet the needs of the City of Austin over the next five (5) years.

ADVA Response: Read and agree.

8. To update (DWDM/CWDM) transport monitoring tools, notifying network administrators for timely notification of an outage or serious fault.

To obtain a means to employ the best technical ADVA employee resource to support in-house NIO ADVA Optical Operations.

ADVA Response: Read and agree.

### 1.3 ADVA Optical

During the life of the contract ADVA Optical shall:

- Provide a detailed list of the necessary ADVA CBI resources with expertise, complete with current personnel job descriptions, which shall be required for the City to maintain the system once implemented.

ADVA Response: Read and agree.

- Provide the requested ADVA Resident Support Engineer's updated resume indicating experience with the City, CTM Network Infrastructure Operations, the City's ADVA Optical Enterprise Network and requirements implemented.

ADVA Response: Read and agree. Reference Exhibit D.

- See attachment Exhibit "A" Requirements for **Lukasz Wolczynski**.

ADVA Response: Read and agree to all requirements in Exhibit A with the exception of requirement 28. ADVA proposes the following language for requirement 28:

"The resident engineer is authorized to provide additional support outside of the normal work week in the amount of 20 additional hours annually above a 40 hour work week."

**NOTE:** The ADVA Vendor's staff shall not have the authority to escort any other Vendor, including their own ADVA staff to the field.

### 1.4 ADVA Additional Terms

1. To continue uninterrupted Resident Engineer support of City of Austin network from January 1, 2019 to December 31, 2019, ADVA must receive renewal Purchase Order by close of business Friday, December 14, 2018.
2. ADVA will assign Lukasz Wolczynski as City of Austin Resident Engineer. During the term of this agreement, ADVA reserves the right to assign another similarly qualified engineer if Lukasz Wolczynski terminates ADVA employment or is unable to fulfill Resident Engineer responsibilities for reasons beyond ADVA's control.
3. In the event of Lukasz Wolczynski replacement, ADVA will provide City of Austin with 30 days written notice. This agreement remains in effect. ADVA will work diligently to identify Resident Engineer replacement candidates. City of Austin can interview candidates and will work with ADVA to identify Resident Engineer replacement. During the search for Resident Engineer replacement, support will be delivered through temporary assignment of ADVA Network Engineer(s).
4. Lukasz Wolczynski will have four weeks of 'Time-off', this is a combination of Paid Time-off (PTO) and ADVA in-house training. A two week, or longer, notice will be provided to the Customer for

such activities. During these times that the customer will have access to a named engineer, for project continuity. The RE will update the named engineer on ongoing projects.

5. During the term of this agreement, If Lukasz Wolczynski terminates ADVA employment to work for City of Austin, this agreement remains in effect. In this event, ADVA may deliver Resident Engineer responsibilities through ADVA Network Engineer(s). No refund of Purchase Order value is given by ADVA to City of Austin.

## 2.0 Bid Evaluation

### 2.1 Evaluation Criteria

Criteria	Description	% of Total
Designation and submission of the <b>Lukasz Wolczynski</b> , as ADVA Optical Resident Support Engineer: <ul style="list-style-type: none"> <li>• ADVA Optical Experience</li> <li>• Experience with ADVA TAC</li> <li>• Experience with the City of Austin Facilities</li> <li>• Experience with the COATN 2.0 Upgrade Project</li> <li>• Knowledge of Austin's Enterprise Network Requirements</li> <li>• Experience with CTM NIO Staff</li> </ul>	Compliance with functional requirements Compliance with technical requirements	80
Evaluated Cost	Annual cost Annual cost maintained for the contract TERM Payment Schedule/Milestones	20
TOTAL		100

ADVA Response: Resident Engineer annual prices provided in Exhibit B.

**Exhibit A**  
**Certificate of Exemption, Non-Competitive Bid for ADVA Optical Supporting Resident Engineer , Lukasz Wolczynski**

Req. No.	Professional Services	Description of Requirements	COA	ADVA Optical	Mandatory / Preferred
001	Lab Verification	Provide assistance in the City's lab in testing new features and/or solutions in advance of production rollout.		✓	
002	Lab Verification	Assist and mentor in the support for City-led daily operational test activities associated with the ADVA Optical Network.		✓	
003	Configuration and Service Provisioning	Provide assistance to City Network Operations in system setup, configuration, backup/restore and routine maintenance.		✓	
004	Configuration and Service Provisioning	Review and provide input to the configuration guidelines established from the Solution Design phase of the engagement.		✓	
005	Configuration and Service Provisioning	Provide assistance in the review of configuration data and support the configuration and provisioning of the solution into production.		✓	
006	Configuration and Service Provisioning	Support final validation upon successful completion of the configuration.		✓	
007	Configuration and Service Provisioning	Verify City's ADVA Optical products integrate and operate smoothly with equipment from other vendors.		✓	
008	Software releases	Assist, support, oversee and/or provide knowledge transfer on the software installation and upgrade process.		✓	
009	Software releases	Provide consultation to the City for the integration of Software release processes into existing methodology.		✓	
010	On-site network fault management	Assist and mentor NOC Operations with fault isolation, issue triage, investigation, replication and trouble resolution, in the future.		✓	
011	On-site network fault management	Provide support to City's NOC to accelerate restoration time and minimize downtime, in the event of reported issues.		✓	
012	On-site network fault management	Provide on-site trouble resolution and fault isolation support for City NOC and local field personnel, when issues are escalated.		✓	
013	Training	Provide informal ADVA on-the-job-training, hands on, over the shoulder knowledge transfer on the installation and operations.		✓	
014	Transition Plan	Assist in defining the Transition from project support to Operational self-sufficiency.		✓	
015	Transition Plan	Support Transition and Planning for the COATN 2.0 Project Upgrade for Operations in regards to the addition of new nodes/sites to the City's Enterprise ADVA Optical Enterprise Network.		✓	

**Exhibit A**  
**Certificate of Exemption, Non-Competitive Bid for ADVA Optical Supporting Resident Engineer , Lukasz Wolczynski**

Req. No.	Professional Services	Description of Requirements	COA	ADVA Optical	Mandatory / Preferred
016	Technical Escalation	Assist in bug tracking and reporting, review of release notes and understanding of warning's alerts and bulletins.		✓	
017	Technical Escalation	Provide the Technical Point of Contact for escalation support to the City and ADVA CTAC.		✓	
018	Technical Escalation	Perform Network Management System utilization/monitoring on the City of Austin Network Management Systems.		✓	
019	Technical Escalation	Disseminate new information into the City's NIO Division, other Departments and groups, and with City Vendors.		✓	
020	Technical Escalation	Attend technical review meetings.		✓	
021	Technical Escalation	Assist CTM NIO Division staff with tracking and managing the network equipment inventory.		✓	
022	Service Part Number	Provide ADVA Part Number: <b>70411900001</b> ADVA Description: <b>Resident Support Engineer</b>		✓	
023	ADVA Management	Confirm scope of work between ADVA and City.		✓	
024	ADVA Management	Conduct periodic quality reviews to confirm City satisfaction.		✓	
025	ADVA Management	Verify annually with City assigned ADVA Resident Support Engineer.		✓	
026	Work Schedule	Provide 40 hours weekly on-site support to daily operations, maintenance, administration, and expansion of ADVA optical system and ADVA Network Management System.		✓	
027	Work Schedule	Work on the City's premises as an on-site contracted City employee full-time.		✓	
028	Work Schedule	<del>Provide 20 hours (above a 40 hour work week) annually for overtime support outside of normal business hours.</del> The resident engineer is authorized to provide additional support outside of the normal work week in the amount of 20 additional hours annually above a 40 hour work week.		✓	
029	Experience	Provide an updated resume for the ADVA Resident Support Engineer indicating experience with the City, CTM Network Infrastructure Operations staff, the City's ADVA Optical Enterprise Network and requirements implemented.		✓	

**Exhibit A**  
**Certificate of Exemption, Non-Competitive Bid for ADVA Optical Supporting Resident Engineer , Lukasz Wolczynski**

Req. No.	Professional Services	Description of Requirements	COA	ADVA Optical	Mandatory / Preferred
030	Experience	Experience with monitoring and administration of the COA ADVA Optical Enterprise Network.		✓	
031	Experience	Current active Criminal Background Investigation (CBI) and FBI Criminal Justice Information Services (CJIS) clearance(s) through Austin Police Department with fingerprints on file. <b>Note:</b> ADVA Optical Resident Support Engineering (Must be able to maintain the CBI and CJIS clearances for the contract duration.		✓	
032	Experience	Apply a full understand of “best practices” derived from the City experiences to prevent issues from arising by having a full knowledge of the NIO Division and the newly implemented COATN 2.0 Project Upgrade.		✓	
033	Administrative	Provide office space for ADVA Optical Resident Support Engineer.	✓		
034	Administrative	Provide facilities, including telephones, personal computer hookups, and access to copy machines.	✓		
035	Administrative	Provide Local Area Network/Wide Area Network access.	✓		
036	Administrative	Provide “authorization to pay” to the City’s Finance Office regarding the Vendor’s deliverables as negotiated.	✓		
037	Administrative	Provide notification to Enterprise End Users of the City’s Network when work is to be performed at their site/node or affecting services.	✓		
038	Administrative	Provide knowledgeable technical NIO staff members as escorts when and where required in City facilities.	✓		
039	Administrative	Provide day-to-day direction for on-site ADVA Resident Support Engineer when questions arise.	✓		
040	Administrative	Provide Administrative designated Contract Single Point of Contact while working as an ADVA Optical employee on-site.	✓		
041	Administrative	Provide the point of contact for the ADVA Resident Support Engineer during designated on-site new or upgrade projects.	✓		

**Exhibit A**  
**Certificate of Exemption, Non-Competitive Bid for ADVA Optical Supporting Resident Engineer , Lukasz Wolczynski**

<b>Req. No.</b>	<b>Professional Services</b>	<b>Description of Requirements</b>	<b>COA</b>	<b>ADVA Optical</b>	<b>Mandatory / Preferred</b>
042	Administrative	Provide weekly status reports to the City's Point of Contact.		✓	
043	Administrative	Provide weekly timesheet reports per calendar month to the City's Point of Contact.		✓	
044	Administrative	Provide a City hangtag to the ADVA Optical Resident Support Engineer for free parking, where applicable during a field visits and implementation.	✓		
045	Administrative	Responsible for payment during the unplanned leave or termination of ADVA Optical Resident Support Engineer position.		✓	
046	Administrative	Provide lodging, travel, or per diem related to Resident Support Engineer or ADVA Optical Management Staff.		✓	
047	Administrative	Provide confidentiality to the City not revealing knowledge, data, processes under the City's protection		✓	

## Exhibit B

### Resident Engineer Annual Prices

Customer:	City of Austin	Adva Optical Networking:	
Contact:	Mary Lou McCarver	Contact:	John Reynolds
Street:	1124 South IH-35 Suite 300	Title:	Account Manager North America
City:	Austin	Sales Region:	NA: Enterprise
State/Province:	TX	Country:	US
ZIP Code:	78704	Tel.:	
Country:	UNITED STATES	e-mail:	jreynolds@advaoptical.com

<b>ADVA Quotation References:</b>	
<b>ID:</b>	OID- 201031
<b>Name:</b>	CoA Resident Engineer Extension
<b>Date:</b>	Oct 12, 2018
<b>Quote Expiration Date:</b>	Nov 12, 2018

Resident Engineer Annual Prices				
Product	Product ID	Sales Price (in USD)	Quantity	Subtotal per Product ID (in USD)
<b>YEAR 1 - RESIDENT SUPPORT ENGINEER</b> Start: January 1, 2019 End: December 31, 2019  Invoicing Frequency: Full Amount Invoice Timing: In advance	7041190001	\$276,800.00	1 year	\$276,800.00
<b>YEAR 2 - RESIDENT SUPPORT ENGINEER</b> Start: January 1, 2020 End: December 31, 2020  Invoicing Frequency: Full Amount Invoice Timing: In advance	7041190001	\$285,104.00	1 year	\$285,104.00
<b>YEAR 3 - RESIDENT SUPPORT ENGINEER</b> Start: January 1, 2021 End: December 31, 2021  Invoicing Frequency: Full Amount Invoice Timing: In advance	7041190001	\$293,657.00	1 year	\$293,657.00
<b>Total</b>				<b>\$855,561.00</b>

All purchase orders for the sale of products and provision of services by ADVA Optical Networking shall be governed solely by Exhibit C: ADVA Terms and Conditions of Sales and Services, Contract ID No. 00022542.

All prices quoted shall be exclusive of Value Added Tax (VAT), withholding tax or any other local tax.

Submit Purchase Order To

ADVA Optical Networking  
5755 Peachtree Industrial Blvd.  
Norcross, GA 30092  
Fax: 888-340-4885  
Attn: Customer Focus Team NA  
Email: [atl-efax@advaoptical.com](mailto:atl-efax@advaoptical.com)

## Exhibit C

### TERMS AND CONDITIONS OF SALES AND SERVICES

All Customer orders for the sale of products and the provision of services by Supplier shall be governed solely by the following Terms and Conditions of Sales and Services ("Terms"):

#### 1. ORDERING

Supplier's quotations are valid for thirty (30) days. Any single purchase of products or services requires an order by Customer and a written acceptance of such order by Supplier.

#### 2. PRICES AND PAYMENT

Prices exclude, and Customer is responsible for all sales, value-added or similar taxes, except for those taxes based on the income of Supplier. In the event withholding taxes (e.g. on licenses) are to be withheld by Customer due to international or national tax law requirements, Customer will send Supplier all country-specific tax forms needed to obtain the exemption or reduction of withholding taxes ('certificate of tax exemption') to [global-tax@advaoptical.com](mailto:global-tax@advaoptical.com). Customer will support Supplier in the process of obtaining the tax reduction or exemption pursuant to the applicable double tax treaty. Furthermore, immediately after any payment has been made, Customer will provide Supplier with a 'withholding tax certificate' showing the total tax amount withheld.

Payment is due thirty (30) days after Supplier's invoice date. Supplier shall be entitled to conduct regular credit checks on Customer. Should Customer's credit rating adversely change or if Customer fails to pay invoices on time, Supplier may, in its sole discretion, unilaterally change the payment terms set out above. Supplier has the rights to claim an interest of twelve percent (12%) p.a. and/or to suspend further deliveries where payment for any order has not been made on due date. In addition, Customer shall reimburse Supplier for any and all costs and expenses of collection, including reasonable attorney's fees.

#### 3. DELIVERY OF PRODUCTS

Delivery of products shall be effected FCA Supplier's manufacturing site (according to Incoterms 2010) and with a freight carrier to be indicated by Customer to Supplier. If Customer fails to indicate a specific freight carrier, Supplier shall arrange appropriate transportation and invoice the additional costs.

Supplier's delivery times are estimates only and commence from Supplier's confirmation of Customer's order. Supplier takes all reasonable steps to deliver the products at the time stated, but Supplier shall be under no liability for any failure to do so or to inform Customer of any delay.

Supplier reserves the right to deliver products prior to the confirmed delivery date and to deliver in more than one consignment and to invoice each consignment separately.

Title and risk of loss or damage to hardware products shall pass to Customer with handing over of the products to the freight carrier. Title to software products, firmware, and documentation will remain with Supplier or its supplier.

#### 4. DOCUMENTATION

Supplier shall provide to Customer access to product documentation in electronic form in English language. Supplier shall use reasonable efforts to ensure the accuracy of any documentation relating to the products, but Supplier accepts no liability in contract or otherwise for any damages or injury arising directly or indirectly from any error or omission in such documentation.

#### 5. LIMITED WARRANTY

Supplier hardware products will substantially conform to their specifications and are free from defects in workmanship or material under normal use during the warranty period. Hardware products and spare parts may be refurbished. Supplier software products, if expressly designated as warranted, will substantially conform to their documentation. All updates, upgrades and new releases and all other software products are provided "AS IS" without warranty. The warranty period shall be twelve (12) months and will commence upon Supplier's delivery of the products. Customer's sole and exclusive remedy and the entire liability of Supplier under this limited warranty will be, at Supplier's option, to use reasonable efforts to repair or replace, and to return such product to Customer, or, if Supplier is unable to correct the non-conformance, to take back the product against refund.

All replaced or repaired products shall be warranted for the longer of ninety (90) days or the remaining warranty period for the products being replaced or repaired. All replaced products become the property of Supplier.

Supplier's obligations under this limited warranty are conditioned upon the prompt notification of the non-conformance, and the return of the affected product in accordance with Supplier's then-current Return Material Authorization ("RMA") procedure. Products returned to Supplier pursuant to this warranty shall be adequately packaged, shipped, and insured at Customer's expense. Supplier shall cover the costs of examination, repair or replacement, shipping and insurance to return such products to Customer, unless Supplier demonstrates that a returned product is in conformance with its warranty so that Customer will cover these costs.

Services provided by Supplier will conform at the time of performance to the applicable service description or statement of work. The warranty period for services shall be ninety (90) days and will commence upon performance of the service. Customer's sole and exclusive remedy and the entire liability of Supplier under this limited warranty will be, at Supplier's

option, to correct the defective service or, if Supplier is unable to correct the defective service, to refund the respective service fee.

Customer will provide, upon request by Supplier, a written confirmation of delivery of products, performance of services and/or, if an acceptance by Customer has been expressly agreed elsewhere e.g. in a separate service description or statement of work, an acceptance of products or services. Should Customer neither provide such confirmation nor any written and reasoned rejection within ten (10) working days after receipt of Supplier's request, the products or services shall be deemed delivered, performed and/or accepted.

The above warranties do not apply to products from which the serial numbers have been removed, or to conditions resulting from improper use, accidents, external causes, including installation, relocation of products, service or modifications not performed by Supplier or its service providers, or operation outside the environmental parameters specified for the product, unless Customer shows that the defect was not caused by such circumstances.

Supplier does not warrant that products' performance will be error-free or that their use will be uninterrupted. Customer is responsible for ensuring that back-up copies of all software and data are made.

Customer may not assign warranty rights or claims to third parties.

Unless otherwise expressly agreed in writing between the parties, Supplier assumes no responsibility or makes no warranty for the sizing, specific configuration, functionality or performance of an integrated system, or any compatibility or interoperability.

**SUPPLIER MAKES NO OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, AND DOES NOT WARRANT THE SERVICES' OR PRODUCT'S PERFORMANCE WITH ANY THIRD PARTY PRODUCT. THE WARRANTIES CONTAINED IN THESE TERMS ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.**

#### **6. THIRD PARTY INTELLECTUAL PROPERTY RIGHTS**

Supplier shall have the right to defend or, at its option, settle at its own expense any claim, suit, action or proceeding brought against Customer by a third party to the extent it is based on any infringement of intellectual property rights (e.g. patents, trademarks, utility models, designs, copyrights) owned by such third party by any products purchased by Customer from Supplier under these Terms ("Claims").

Customer shall not concede the validity of, or settle, such a Claim from any third party without the prior written consent of Supplier. If necessary, Supplier shall support Customer in responding to such a Claim and Customer shall manage the dispute, especially a lawsuit, only in accordance with written instructions of Supplier.

Supplier shall indemnify Customer against all justified damages, costs and reasonable attorney fees finally awarded against Customer under such Claims by a court of competent jurisdiction of last resort or in a settlement agreed to by Supplier. Customer will take all reasonable steps to cooperate with Supplier in Supplier's efforts to mitigate any potential damages, costs and expenses incurred by Supplier.

Supplier shall only be obligated to indemnify if Customer has given Supplier prompt written notice of any alleged or threatened Claims, has not acknowledged any such Claim, has allowed Supplier to control the defense and settlement of such Claims and has provided all reasonable assistance and information as may be reasonably requested by Supplier.

If, as a result of a Claim, Customer becomes enjoined or it is likely, in Supplier's opinion, that Customer will become enjoined from using the products, Supplier shall, at its option:

- (a) procure for Customer the right to use the products;
- (b) provide Customer with non-infringing replacement products or modify the products so they become non-infringing, provided that the replacement product/modified products meet substantially the same functional specifications; or
- (c) upon return of the infringing products refund to Customer the purchase price reasonably depreciated by a three (3) year linear method for its use.

Supplier will have no liability with respect to any Claims arising out of or relating to specifications provided or requested by Customer, modifications or alterations made by Customer, or the combination of products with third party equipment.

These Terms state the entire liability of Supplier with respect to Claims. Except as expressly stated in this Article, all further warranties are hereby disclaimed to the extent permitted by law.

#### **7. LIMITATION OF LIABILITY**

**NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS THE FOLLOWING PROVISIONS SHALL EXCLUSIVELY GOVERN THE LIABILITY OF SUPPLIER, REGARDLESS OF THE LEGAL THEORY UPON WHICH IT IS BASED, INCLUDING BUT NOT LIMITED TO LIABILITY IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY), MISREPRESENTATION, UNDER WARRANTY, INDEMNITY OR GUARANTEE.**

**THE AGGREGATE LIABILITY OF SUPPLIER ARISING OUT OF OR IN CONNECTION WITH THESE TERMS SHALL BE LIMITED TO A TOTAL OF US-DOLLARS (\$ 50,000).**

**SUPPLIER IS NOT LIABLE FOR LOSS OF USE, PROFIT, SAVINGS, GOODWILL, BUSINESS, OR CUSTOMERS, LOSS OR DAMAGE TO DATA OR SOFTWARE, THIRD PARTY CLAIMS BEYOND THOSE STIPULATED IN ARTICLE 6 AND CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES OR FOR ANY OTHER LOSS OR DAMAGE OF A SIMILAR NATURE.**

THE LIMITATIONS SET FORTH IN THIS ARTICLE SHALL NOT APPLY FOR DAMAGE CAUSED BY INTENTIONAL ACTS, FOR BODILY INJURY (INCLUDING DEATH) AND, IF APPLICABLE, CLAIMS UNDER MANDATORY PRODUCT LIABILITY LAWS.

#### **8. COMPLIANCE**

Customer warrants and represents that Customer a) will comply with the principles of the ADVA Group Code of Conduct available at: <http://www.advaoptical.com/en/about-us/corporate-responsibility/corporate-ethics-and-compliance.aspx>, and subject to periodic modifications by Supplier; b) will comply with and provide training to relevant employees regarding all applicable laws and regulations pertaining to bribery, corruption and prohibited business practices, including the U.S. Foreign Corrupt Practices Act and will not partake in any actions in violation of such laws and regulations.

#### **9. DISPUTE RESOLUTION**

Each party agrees that any disputed claim or controversy arising out of or in connection with these Terms or any subsequent purchase of products or services by Customer hereunder, including any question regarding its existence, validity or termination, ("Dispute") will first be submitted in writing to the designated senior executives of Supplier and Customer who shall meet in person in an effort to resolve such Dispute within thirty (30) days. If the parties are unable to resolve such Dispute, the Dispute shall be finally settled by the courts in New York, NY, United States.

The rights and obligations of the Parties under these Terms, as well as under any single purchase order, shall be governed by the substantive law in force in the State of New York, without regard to its conflict of laws rules. The application of the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 shall be excluded.

#### **10. GENERAL**

Customer and Supplier undertake to keep information relating to the product, services, business and pricing confidential at least with the same degree of care with which they treat and protect their own confidential information.

Neither party shall be liable for the failure to perform any of its obligations under these Terms if such failure is caused by the occurrence of any act of force majeure or any other contingency beyond its reasonable control.

Customer represents to comply with all U.S. and any other applicable government export control regulations whenever Customer (re-) exports products or technical data obtained from Supplier.

As part of the European Directive on Waste Electrical and Electronic Equipment ("WEEE" Directive 2012/19/EU) and similar national laws in other nations to reduce the waste of electronic equipment, Supplier offers an environmentally friendly recycling process for products and covers all associated costs for the recycling. In order to support the environmentally friendly recycling of products, Customer will return products at the end of their use to Supplier and cover all return costs. Should Customer decide to dispose of products on its own, Customer will cover all associated costs. Should Customer decide to sell or pass on products to another business customer, then Customer will either continue to cover all return or disposal costs or pass on such obligations to the business customer.

Any waiver of any provision of these Terms, or a delay by either party in the enforcement of any right hereunder, shall neither be construed as a continuing waiver, nor create an exception of non-enforcement of that or any other provision or right.

If any provision contained in these Terms is found to be invalid by a court having jurisdiction, all other provisions of these Terms shall remain in full force and effect and there shall be a substitution for said invalid provision with a valid provision having an economic effect as similar as possible.

No terms or conditions other than those specified herein shall be applicable, in particular not those stated or mentioned in any purchase order by Customer. All modifications, changes and amendments to these Terms must be in writing specifically expressing the intent to modify, change or amend these Terms or waive this writing requirement to be valid, and must be signed by two duly authorised persons on behalf of Supplier.

**11. SIGNATURES**

Agreed between **City of Austin**

with an office at:

**1124 I-35 South  
Austin TX 78704**

("Customer")

Date:

By: \_\_\_\_\_

Name:

Title:

Tel:        Fax:        Email:

and ADVA Optical Networking North America Inc with an office at 5755 Peachtree Industrial Boulevard Norcross, GA 30092 U.S.A. ("Supplier")

By: \_\_\_\_\_ Title:

Name:

By: \_\_\_\_\_ Title:

Name:

**Exhibit D**

**Lukasz Wolczynski Resume**

# Lukasz Wolczynski

nationality: Polish  
address: 2401 Aldrich St #472  
Austin, TX 78723  
mobile: +1 404 645 5373  
e-mail: lwolczynski@advaoptical.com

## Summary

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Telecom engineer with working experience in fiber optics, networking and testing. Currently working as resident engineer for City of Austin, taking care of maintenance and deployment of the network. Ambitious, self-motivated, looking for a development opportunity, especially in networking. Started Cisco certification path and pursuing to extend knowledge in this field.

## Work experience

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- Apr 2018 – present: ADVA Optical Networking Resident Engineer at City of Austin (Austin, TX, USA)  
main activities and duties:
- maintaining customer optical network built on ADVA gear
  - troubleshooting and solving network issues
  - leading new network elements deployment process
  - verifying and updating project documentation
  - looking for ways to improve network operations
- Jun 2016 – Mar 2018: Technical Services Engineer at ADVA Optical Networking (Gdynia, Poland)  
main activities and duties:
- providing highest quality engineering-level technical assistance to customers
  - conducting troubleshooting/recovery process to solve and prevent network faults
  - assisting in customer facing activities such as onsite support and deployments
  - sharing knowledge and experience via coaching and internal training
  - administration and maintenance of equipment and tools used for support purposes
- Oct 2014 – May 2016: Student R&D Network Engineering at ADVA Optical Networking (Gdynia, Poland)  
main activities and duties:
- specifying and designing manual and automated system tests
  - test execution with self-prepared test environments and tools
  - responding to internal/external customers' requests
  - performing interoperability tests between ADVA and Brocade/Cisco/EMC devices
  - executing tests to determine if ADVA products meet customer requirements
- Jul 2014: Trainee - Java Developer at Nowatel Sp. z o.o. (Rumia, Poland)

main activities and duties:

- designing and creating Java applications
- developing Java applications
- working in a project team

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### **Certificates**

Aug 2016: Cisco Certified Network Associate Routing & Switching  
Nov 2015: Cisco Certified Entry Network Technician

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### **Education**

2015 – 2016: Full-time MSc studies at the Faculty of Electronics, Telecommunications and Informatics at Gdansk University of Technology (Gdansk, Poland)

- faculty: Electronics and Telecommunications
  - specialty: Radio Communication Systems and Networks

2011 – 2015: Full-time BSc studies at the Faculty of Electronics, Telecommunications and Informatics at Gdansk University of Technology (Gdansk, Poland)

- faculty: Electronics and Telecommunications
  - profile: Telecommunications

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### **Languages**

Polish: native  
English: fluent

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### **Skills**

Experience in DWDM, fiber optics and Storage Area Networks  
Experience in operating protocol testers  
Experience in working closely with customers and partners  
Solid knowledge of OTN and Ethernet technology  
Working experience of Brocade and Cisco Fibre Channel switches

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### **Soft skills**

Attention to detail  
Able to work individually or in a team  
Adaptable to new situations  
High self-motivation  
Persistence in pursuing goals

**EXHIBIT D**  
**City of Austin, Texas**  
**NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION**

**City of Austin, Texas**  
**Equal Employment/Fair Housing Office**

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

**City of Austin**  
**Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy**

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

**Sanctions:**

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

**Term:**

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 6<sup>TH</sup> day of MARCH, 2019

CONTRACTOR	<u>ADVA OPTICAL NETWORKING</u>	CONTRACTOR	<u>ADVA OPTICAL NETWORKING</u>
Authorized Signature	<u>NA, INC.</u> <u>[Signature]</u>	Authorized Signature	<u>NA, INC.</u> <u>[Signature]</u>
Title	<u>DIR COMMERCIAL MGT</u> <u>AMERICAS</u>	Title	<u>SUP SALES MGT</u>

EXHIBIT E  
CITY OF AUSTIN PURCHASING OFFICE  
STANDARD PURCHASE DEFINITIONS

Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

1. Addendum - a written instrument issued by the Contract Awarding Authority that modifies or clarifies the Solicitation prior to the Due Date. "Addenda" is the plural form of the word.
2. Alternate Offers - multiple Offers with substantive variations from the same Offeror in response to a Solicitation.
3. Appropriate, Appropriated, or Appropriation - the adoption by the City Council of a budget for a fiscal year that includes payments to be made under the Contract during the respective fiscal year.
4. Authorized City Representative - a person designated by the City Manager to act for the Contract Awarding Authority.
5. Best Offer - the best evaluated Offer in response to a Request for Proposals or Request for Qualification Statements.
6. Best Offeror - the Offeror submitting the Best Offer.
7. Bid - a complete, properly signed response to an Invitation for Bid, which if accepted, would bind the Bidder to perform the resultant Contract.
8. Bidder - a person, firm, or entity that submits a Bid in response to an Invitation for Bid. Any Bidder may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
9. Bid Guaranty – a form of security assuring that the bidder (a) will not withdraw the Bid within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Bidder upon execution of a Contract.
10. Bid Sheet - a document, signed and dated by a Bidder, containing unit and extended bid prices for all goods and/or services, identified by item numbers and descriptions, for which Bids are being submitted
11. Business Entity – any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation.
12. Central Purchase Order (CT) - a financial system document issued by the Contract Awarding Authority to encumber funds to pay for the deliverables identified in a Contract.
13. City - the City of Austin, a Texas home-rule municipal corporation.
14. Compliance Plan - is defined in chapter 2-9 of the City Code.
15. Construction - the construction, repair, rehabilitation, alteration, conversion or extension of buildings, parks, utilities, streets or other improvements or alterations to real property.
16. Contract - a binding legal agreement between the City and the Offeror. The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:
  - A. any exceptions to the Offer accepted in writing by the City
  - B. the Supplemental Purchase Terms and Conditions

- C. the Standard Purchase Terms and Conditions
- D. the Offer, exhibits, and attachments; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.
17. Contract Awarding Authority - a City department authorized to enter into Contracts on behalf of the City.
18. Contractor/Consultant - a person, firm or entity that supplies or provides goods and/or services to the City by Contract.
19. Controlling Interest means: (1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stocks or otherwise that exceeds 10 percent; (2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or (3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers.
20. Deliverables - the goods, products, materials, and/or services to be provided to the City under a Purchase Order, Contract, or Master Agreement.
21. Delivery Order - a release against a Master Agreement authorizing delivery of goods and/or performance of services. A financial system document issued by the Department to encumber funds to pay for the deliverables.
22. Disadvantaged Business Enterprise - is defined in 49 Code of Federal Regulation Part 26 or other applicable federal regulations.
23. Due Date - the date and time specified for receipt of Bids, Proposals, Qualification Statements, Quotations, Responses, Submittals and Compliance Plans.
24. Goods - supplies, materials, or equipment.
25. Highest Responsible Offer - the highest Offer meeting all requirements of the specifications, terms, and conditions of the Invitation for Bid-Sale or Request for Quotation-Sale.
26. Highest Responsible Offeror - the Offeror submitting the "Highest Responsible Offer."
27. Interested Party – a person who has a Controlling Interest in a Business Entity with whom the City contracts or who actively participates in facilitating the Contract or negotiating the terms of the Contract, including a broker, intermediary, adviser, or attorney for the Business Entity.
28. Invitation for Bid (IFB) - a Solicitation requesting pricing for a specified Good or Service which has been advertised for Bid in a newspaper and/or on the Internet.
29. Late Offer - a Bid, Proposal, Quote, Response, or Submittal that is received after the Due Date and time specified in the Solicitation.
30. Lowest Responsible Offer - the Offer meeting all requirements of the specifications, terms, and conditions of the Invitation for Bid or Request for Quotation resulting in the lowest cost to the City in a total cost concept or based solely on price, taking into consideration the financial and practical ability of the Vendor to perform the Contract, past performance of the Vendor, and compliance with all City ordinances concerning the purchasing process.
31. Lowest Responsible Offeror - the Offeror submitting the Lowest Responsible Offer.
32. Master Agreement - a term contract that is used when the total quantity required cannot be definitely fixed, but can be stated as an estimate or within maximum and minimum limits with deliveries on demand. A Master Agreement does not create a financial obligation.
33. Minority-Owned Business - is defined in chapter 2-9 of the City Code.

34. Non-Professional Services - services performed that are not of a professional nature such as lawn care, security, janitorial, etc.
35. Offer - a complete signed response to a Solicitation including, but not limited to, an Invitation for Bid, a Request for Proposal, a Request for Qualification Statements, or a Request for Quotation.
36. Offeror - a person, firm, or entity that submits an Offer in response to a City Solicitation. Any Offeror may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status. Includes Bidders, Proposers, Quoters, Contractors and Consultants.
37. Pre-Bid / Proposal / Quote / Response / Submittal Conference - a conference conducted by the Contract Awarding Authority, held in order to allow Offerors and Vendors to ask questions about the proposed Contract and particularly the Contract specifications.
38. Professional Services - services that use skills that are predominantly mental or intellectual, rather than physical or manual such as accounting, architecture, land surveying, law, medicine, optometry, professional engineering, etc.
39. Proposal - a complete, properly signed response to a Request for Proposals, which if accepted, would bind the Proposer to perform the resultant Contract.
40. Proposal Guaranty - a form of security assuring that the Proposer (a) will not withdraw the Proposal within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Proposer upon execution of a Contract.
41. Proposer - a person, firm or entity that submits a Proposal in response to a Request for Proposals. Any Proposer may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
42. Purchase Order (PO) - an order placed by a City department for the purchase of Goods and/or Services written on the City's standard Purchase Order form and which, when accepted by the Vendor becomes a Contract. The Purchase Order is the Vendor's authority to deliver and invoice the City for Goods and/or Services specified, and the City's commitment to accept the Goods and/or Services for an agreed upon price.
43. Purchasing Office - refers to the Purchasing Office in the Financial and Administrative Services Department of the City.
44. Quote - a complete, properly signed response to a Request for Quotation, which if accepted, would bind the Offeror to perform the resultant Contract.
45. Quoter - a person, firm or entity that submits a Quote in response to a Request for Quotations. Any Quoter may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
46. Request for Information (RFI) - a solicitation used to obtain "state of the art" information on goods and/or services for informational purposes only.
47. Request for Interest (RFINT) - a solicitation used to identify interest in a City requirement.
48. Request for Proposal (RFP) - a solicitation used to acquire goods and/or services when a clearly defined scope of work or specification is not available.
49. Request for Qualification Statements (RFQS) - a solicitation used to acquire professional services as defined by the State of Texas Government Code, Chapter 2254.
50. Request for Quotation (RFQ) - a solicitation used to acquire goods and/or services with a total dollar value less than the State of Texas competitive bidding amount.

51. Resident Bidder - a person, firm, or entity whose principal place of business is in the State of Texas, including a Contractor whose ultimate parent company or majority owner has its principal place of business in the State of Texas.
52. Response - a complete signed reply to a Solicitation including, but not limited to a Request for Information and/or a Request for Interest.
53. Response Guaranty – a form of security assuring that the Offeror (a) will not withdraw the Offer within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Offeror upon execution of a Contract.
54. Responsible - refers to the financial and practical ability of the Offeror to perform the Contract and takes into consideration resources, expertise, and past performance of the Offeror as well as compliance with all City ordinances concerning the purchasing process.
55. Responsive - meeting all the requirements of a Solicitation.
56. Services - include all work or labor performed for the City on an independent Contractor basis other than construction.
57. Solicitation - as applicable, includes Invitation for Bid, Invitation for Bid - Sale, Request for Proposal, Request for Qualification Statements, Request for Quotation, Request for Quotation – Sale, Request for Information, Request for Interest, or such other request as defined by the City.
58. Subcontractor/Subconsultant - a person, firm, or entity providing goods and/or services to a prime Contractor / Consultant to be used in the performance of the prime Contractor/Consultant's obligations under a Contract.
59. Sub-Subcontractor/Sub-Subconsultant- a person, firm or entity providing goods and/or services to a Subcontractor/Subconsultant to be used in the performance of the Subcontractor/Subconsultant's obligations under a Contract.
60. Unbalanced Offer - an Offer that is based on prices which are significantly less than cost for some items and significantly more than cost for others.
61. Vendor - a person, firm, or entity that sells Goods and/or Services.
62. Woman-Owned Business - is defined in chapter 2-9 of the City Code.

**EXHIBIT E**  
**CITY OF AUSTIN, TEXAS**  
**LIVING WAGES CONTRACTOR CERTIFICATION**  
*(Please duplicate as needed)*

Pursuant to the Living Wages provision (reference Section 0400, Supplemental Purchase Provisions) the Contractor is required to pay to all employees of the Prime Contractor and all tiers of subcontractors directly assigned to this City contract a minimum Living Wage equal to or greater than \$15.00 per hour.

- (1) The below listed individuals are all known employees of the Prime Contractor and its subcontractors who are directly assigned to this contract, and all are compensated at wage rates equal to or greater than \$15.00 per hour:

Employee Name	Employer	Prime or Sub	Your Normal Rate	Employee Job Title
Kukasz Wotczyński	ADVA Optical Networking North America, INC	Prime	—	Technical Services Engineer
/	/	/	/	/
/	/	/	/	/
/	/	/	/	/
/	/	/	/	/
/	/	/	/	/

- (2) All future employees of both the Prime Contractor and all tiers of subcontractors directly assigned to this Contract will be paid a minimum Living Wage equal to or greater than \$15.00 per hour.
- (3) Our firm will not retaliate against any employee of either the Prime Contractor or any tier of subcontractors claiming non-compliance with the Living Wage provision.

A Prime Contractor or subcontractor that violates this Living Wage provision shall pay each of its affected employees the amount of the deficiency for each day the violation continues. Willful or repeated violations of the provision by either the Prime Contractor or any tier of subcontractor, or fraudulent statements made on this certification, may result in termination of this Contract for Cause, subject the violating firm to possible suspension or debarment, or result in legal action.

I hereby certify that all the listed employees of both the Prime Contractor and all tiers of subcontractors who are directly assigned to this contract are paid a minimum Living Wage equal to or greater than \$15.00 per hour.

Contractor's Name: ADVA Optical Networking North America, INC

Signature of Officer or Authorized Representative:  Date: 3/7/2019

Printed Name: William Lynch

Title: Senior Director Customer Service Americas

**EXHIBIT F  
CITY OF AUSTIN, TEXAS  
LIVING WAGES EMPLOYEE CERTIFICATION**

Contract Number:	Description of Services: <i>Professional Services</i>
Contractor Name: <i>ADVA Optical Networking</i>	

Pursuant to the Living Wages provision of the contract (reference Section 0400, Supplemental Purchase Provisions), the Prime Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$15.00 per hour, and is further responsible for assuring that employees of all tiers of subcontractors are likewise paid a minimum Living Wage equal to or greater than \$15.00. In addition, employees of both the Prime Contractor and all tiers of subcontractors directly assigned to the referenced contract are required to certify that they are compensated in accordance with the Living Wage provision. Contractors are prohibited from retaliating against any employee claiming non-compliance with the Living Wage provision.

I hereby certify that I am directly assigned to this contract and that I am compensated at wage rates equal to or greater than \$15.00 per hour.

Employee's Title: <i>ADVA Optical Networking Resident Engineer</i>	
Signature of Employee <i>Lukasz Wolczynski</i>	Date <i>3/7/2019</i>
Type or Print Name <i>Lukasz Wolczynski</i>	

*Anthony C. Beckwith*  
(Witness Signature)

Anthony C. Beckwith  
(Printed Name)

To report a non-compliance issue with the City of Austin's Living Wage Program on this contract, please send an email to [PurchasingContractsHelp@austintexas.gov](mailto:PurchasingContractsHelp@austintexas.gov)